

IN THE CHANCERY COURT OF HICKMAN COUNTY, TENNESSEE

KEVIN P. LAVENDER, In his official)
capacity as Commissioner-In-)
Possession of Sentinel Trust Company)
and Receivership Management, Inc.,)
Receiver of Sentinel Trust Company,)
Plaintiffs,) No. 4980
v.)
DANNY N. BATES, et al.,)
Defendants.)

PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS

I. Introduction

Pursuant to Rule 56.03, Tenn. R. Civ. P., Plaintiffs submit their Statement of Undisputed Facts to which there are no genuine issues for trial and upon which summary judgment in their favor can be granted, as set forth in Plaintiffs' Motion for Summary Judgment as to Various Claims Against Various Defendants filed herewith.

II. Undisputed Facts

1. On May 1, 2009, Defendant Danny Bates was found guilty, by a Davidson County, Tennessee criminal jury, of stealing over \$60,000 of Sentinel Trust's trust funds to build a house in Lewis County, Tennessee (205 Bastin Road house). **Exhibit 1¹** -- Criminal Court Jury Verdict Form (Count III).

¹ References to "Exhibits" are references to exhibits attached to Plaintiffs' Motion for Summary Judgment as to Various Claims Against Various Defendants filed herewith.

2. On May 1, 2009, Defendant Danny Bates was found guilty, by a Davidson County, Tennessee criminal jury, of stealing over \$60,000 of Sentinel Trust's trust funds to pay \$575,000 to settle a civil judgment. **Exhibit 1** -- Criminal Court Jury Verdict Form (Count I).

3. The criminal jury in the Bates trial was instructed, regarding the two criminal counts of theft, as follows:

**COUNTS ONE & THREE
THEFT OF PROPERTY**

Any person who commits the offense of theft of property is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:

(1) that the defendant knowingly obtained or exercised control over property to wit: money valued at over sixty thousand dollars (\$60,000.00), the property of Sentinel Trust, Inc., as indenture trustee for funds belonging to other persons who had funds on deposit in Sentinel's trust account;

and

(2) that the defendant did not have the owner's effective consent;

and

(3) that the defendant intended to deprive the owner of the property.

Exhibit 2 -- Bates Criminal Trial Jury Charge at unnumbered page 3.

4. As a result of a Sentencing Hearing on June 26, 2009, Danny Bates was sentenced to two concurrent eight year sentences, 10 days of which was to be spent in jail with the remainder to be served on probation. **Exhibit 3** -- Criminal Judgment Form. As

the result of a Restitution Hearing held on July 31, 2009 (which had been reset from an earlier scheduled July 24, 2009 date), a criminal restitution judgment of \$600,000 (joint and several as to the two theft counts) was entered against Danny Bates. **Exhibit 3**; see also Exhibit 4 -- front page of Restitution Hearing Transcript – to confirm July 31, 2009 date.

5. Commissioner Greg Gonzales of the Tennessee Department of Financial Institutions, in his capacity as Commissioner-in-Possession of Sentinel Trust Company, was expressly identified in the Criminal Judgment as the victim of Danny Bates' crimes and to whom restitution was to be paid. **Exhibit 3**.

6. In the Bates criminal trial, proof of a total of \$1.6 million of Sentinel Trust funds was presented as having been stolen by Danny Bates and used to build and/or furnish the 205 Bastin Road house. **Collective Exhibit 5** -- Criminal Trial Transcript Excerpts and Criminal Trial Exhibits 31, 32, 39, 40, 41, 51 and 52. Proof of \$575,000 of Sentinel Trust funds was presented as having been stolen by Danny Bates to settle a civil judgment. **Collective Exhibit 6** -- Criminal Trial Transcript Excerpts and Criminal Trial Exhibits 14, 15 and 48.

7. Danny Bates' defense to the criminal charges was that he used his own funds to build and furnish the 205 Bastin Road house² and that the \$575,000, used to pay for a settlement of a civil judgment, were not trust funds. **Exhibit 8** -- Criminal Trial Transcript Excerpts; see also Exhibit 2 (Criminal Jury Charge) at unnumbered p.15 ("Claim of Right" instruction). As evidenced by the guilty verdicts, the Davidson County jury disbelieved Danny Bates beyond any reasonable doubt. **Exhibit 1**.

² Danny Bates has maintained the same in this action as well. See Exhibit 7 – Bates Response to Plaintiffs' Interrogatory # 8 at p. 8 ("The costs of constructing the house at 205 Bastin Road were funded by me.").

8. Danny Bates had declared Chapter 7 personal liquidation bankruptcy on June 24, 1993. **Exhibit 9** – Bates’ Bankruptcy Voluntary Petition.

9. As part of that bankruptcy, on April 22, 1994, Danny Bates “bought out of his own bankruptcy” three parcels of property in Lewis County, Tennessee -- a 47.41 acre tract, a 126.86 acre tract and a 9.25 acre tract. The 47.21 acre tract is the property upon which he later had the 205 Bastin Road house built. **Exhibit 10** -- Bankruptcy Trustee Deed.

10. Since that time (i.e., April 22, 1994), until April 23, 2004, Danny Bates was 100% owner of the 205 Bastin Road property. See Exhibit 10 and Exhibit 11 -- April 23, 2004 Quitclaim Deed. There never has been any debt or mortgage on the 205 Bastin Road house.³ **Exhibit 7** -- Bates’ Response to Interrogatory #9 at p. 8.

11. On April 23, 2004, Danny Bates quitclaimed his 100% interest in the debt-free 205 Bastin Road property (including the 205 Bastin Road house) to his wife, Deanne June Bates, for the recital sum of \$10.00. **Exhibit 11**.

12. Danny Bates knew that transferring the 205 Bastin Road house to his wife would limit his own net worth to basically his holdings of Sentinel Trust stock. **Exhibit 7** (Response to Interrogatory # 11, last sentence of Response at p. 10); see also Exhibit 12 -- April 30, 2004 Danny Bates Personal Financial Statement produced by Danny Bates (DNB 2911).

13. The April 23, 2004 transfer of the 205 Bastin Road house was approximately three (3) weeks before the Commissioner-in-Possession took possession of Sentinel Trust Company. Compare Exhibit 11 (with its April 23, 2004 date) with

³ Of course, in conjunction with the filing of this action, a lien lis pendens was placed on the 205 Bastin Road property.

Exhibit 13 -- Notice of Filing of Notice of Possession of Sentinel Trust Company dated May 18, 2004.

14. The April 23, 2004 "\$10.00" transfer of the multi-million 205 Bastin Road house from Mr. Bates to his wife was amidst a flurry of activity between Mr. Bates and the Tennessee Department of Financial Institutions, in its regulatory capacity, relating to the soundness of Sentinel Trust Company. These activities included those set forth in the factual findings of In re: Sentinel Trust, 206 S.W.3d 501 (Tenn. Ct. App. 2005) (to which Mr. Bates was a party):

Following the receipt of the 2002 audit report, Department examiners returned to Sentinel on March 22, 2004 to conduct a reconciliation of the balance of the fiduciary accounts as to December 31, 2003, the balance in the pooled fiduciary account, and the overdrafts on the defaulted bond issues. This reconciliation reflected a net cash shortage in the pooled fiduciary account of \$5,789,011. After notifying Sentinel of net cash shortage, the Department examiners met with Mr. Bates and a Kraft auditor on April 1, 2004. At the meeting, Mr. Bates asked whether the Department's analysis and resulting determination of an approximate \$5.7 million shortfall was incorrect. Mr. Bates admitted that the \$5,789,011 figure was close to the amount of the shortfall.

...

On April 5, 2004, the Commissioner sent a letter to Sentinel requesting an opinion of counsel regarding Sentinel's practice of funding defaulted bond expenses with funds from other non-related bond issues.

...

On April 28, 2004, at a meeting with the Commissioner, Sentinel, and Sentinel's legal representatives from Waller, Lansden, Dortch & Davis, PLLC ("Waller Lansden"), Sentinel's legal counsel, indicated that Sentinel's practice of funding defaulted bond expenses with funds from other non-related bond issues was "inappropriate" and that such expenses were typically funded with corporate assets.

During a meeting of the same parties on April 30, 2004, Mr. Bates admitted that his most recent calculations showed that Sentinel had a deficit fiduciary cash position of approximately \$7.25 million.

Id. at 510-511 (emphasis added to highlight proximity of dates to the April 23, 2004 quitclaim transfer).

15. Therefore, Danny Bates knew, at the time of the April 23, 2004 quitclaim transfer of the 205 Bastin Road house to his wife, that there was, at least, an approximate \$5.7 million shortfall in the Sentinel Trust fiduciary account. Id. at 510.

16. Danny Bates has admitted that any shortfall in the Sentinel Trust fiduciary account was ultimately the responsibility of Sentinel Trust and/or its owners – Bates, himself, being the owner or controller of all of Sentinel Trust stock.⁴ **Exhibit 14** -- July 30, 2004 Affidavit of Danny N. Bates (first sentence of ¶18 at p. 6) (Bates saying that any shortage in fiduciary account would be covered with “part of its owners and all of Sentinel’s assets available”). See also **Exhibit 15** -- Criminal Trial Transcript Excerpts p. 884, lines 21-22 (“corporately” Sentinel would “expense” the shortfall); **Collective Exhibit 16** – Transcript of April 1, 2005 Davidson County Chancery Court Proceedings at pp. 326 (lines 20-24), 346 (lines 11-23), 440 (lines 4-14) and 452 (line 13) -53 (line 21); **Exhibit 17** -- Petition for Writ of Certiorari in Davidson County, Tennessee Chancery Court at ¶14 (last sentence on p. 10) (verified by Danny N. Bates on June 28, 2004 -- last page); In re: Sentinel Trust, 206 S.W.2d at 509 (court noting that in a letter from Bates to Commissioner Lavender, Bates states that “Sentinel recognizes that

⁴ See Answer and Special Defenses of Defendant Danny N. Bates (filed July 19, 2005) at p. 13 where Bates admits ¶4 of the Complaint. Paragraph 4 of the Complaint asserts that Bates was “the president and a director of Sentinel Trust prior to the May 18, 2004 institution of the Sentinel Trust Receivership. Danny Bates either owns or controls all stock in Sentinel Trust.” Complaint at ¶4.

disbursements for a trust in excess of recoverable assets are to be recorded as a corporate expense”).

17. Danny Bates knew, at the time of the April 23, 2004 transfer, that the use of pooled fiduciary funds to provide operating capital for non-related, defaulted bond issues, had created “a fiduciary cash shortfall that greatly exceeded Sentinel’s current operating capital.” In re: Sentinel Trust, 206 S.W.3d at 524.

18. At the end of the April 2004 timeframe, the net worth of Sentinel Trust was \$1.3 million and the deficiency in the pooled fiduciary account was between \$5.8 million and \$7.25 million. In re: Sentinel Trust, 205 S.W.3d at 526. The net worth of Danny Bates after the April 23, 2004 transfer -- even assuming his own \$1.5 million estimation of the worth of his Sentinel Trust stock -- was \$2.0 million. **Exhibit 12.**

19. During this timeframe when Danny Bates was considering and effecting the April 23, 2004 quitclaim transfer to his wife, Danny Bates knew that the Tennessee Department of Financial Institutions’ requirements of additional capital infusion and addressing of the shortfalls in the fiduciary account would require personal sacrifice of everyone at Sentinel Trust. **Exhibit 18** -- May 2, 2004 Interoffice Memo from Danny N. Bates to “All Sentinel Personnel” (DNB 0692) (also Exhibit 60 to Bates Criminal Trial).

20. At basically the same time he was stating that everyone at Sentinel Trust would need to sacrifice, Danny Bates “gave” the 205 Bastin Road house to his wife.⁵

⁵ **Exhibit 19** is a motion filed in the Sentinel Trust Receivership action (#4781) on May 3, 2006 seeking a stay of judgment and a determination of pauper status for the appeal of the decision approving the sale of the Sentinel Trust’s Hohenwald office building. The Receivership Court issued an order on December 20, 2006 which, amongst other matters, cast doubt upon the genuineness of Bates’ assertions of poverty given the property transfers he had made. **Exhibit 20** – Order Denying Bates’ Motion for Stay of Final Judgment at p. 3, fn. 2. That motion (i.e., **Exhibit 19**) contains sworn affidavits of Danny Bates (§1 of which speaks of his gifting “my home” to “my wife”) and of Clifton T. Bates and Gary L. O’Brien. Of note is that Howard H. Cochran did not sign the document. **Exhibit 19.**

Exhibit 19 – Motion for Stay of Final Judgments and Supporting Oaths, at p. 2 (Danny Bates' Affidavit at ¶1).

21. Deanna June Bates remains the owner of the 205 Bastin Road property, including the 205 Bastin Road house. Deanna June Bates' Answer to Complaint (filed July 22, 2005) at p. 5.

22. On July 9, 2004, Danny Bates quitclaimed to his wife, Deanna June Bates, for the recital sum of \$10.00, a 126.83 acre parcel of land,⁶ as well as a 7.91 acre parcel of land, both of which were located in Lewis County, Tennessee. **Exhibit 21.**

23. On July 9, 2004, Danny Bates quitclaimed to his son, Clifton Todd Bates (and his son's wife), a 9.25 acre parcel of land⁷ in Lewis County, Tennessee for the recital amount of \$10.00. **Exhibit 22.**

24. At the time of these transfers, Danny Bates knew that Sentinel Trust had a deficit fiduciary cash position of approximately \$7.25 million. In re: Sentinel Trust, 206 S.W.3d at 210-11.

25. At the time of these transfers, Sentinel Trust had been taken over by the Commissioner-in-Possession and the Notice of Liquidation of Sentinel Trust (due to its insolvency) had been filed. See Exhibit 23 -- June 18, 2004 Notice of Filing of Notice of Liquidation of Sentinel Trust Company.

26. Because of the takeover and finding of insolvency regarding Sentinel Trust, all of the assets of Sentinel Trust were under the authority of the Commissioner-in-Possession. See T.C.A. §45-2-1502(b)(2), §45-2-1502(c)(2) and T.C.A. §45-2-1504.

⁶ This 126.83 acre parcel of land is the same that Danny Bates "bought" from his own bankruptcy in April 1994. See Exhibit 10.

⁷ This 9.25 acre parcel of land is the same that Danny Bates "bought" from his own bankruptcy in April 1994. **Exhibit 10.**

Therefore, if it had value at all, the value of Danny Bates' stock in Sentinel Trust had decreased and, thus, his net worth would have been, at the time of these July 9, 2004 transfers, significantly less than the \$2.0 million he notes in his April 30, 2004 Personal Financial Statement. **Exhibit 12.**

27. Moreover, these July 9, 2004 transfers to Danny Bates' wife and son (and his son's wife) were amidst a flurry of activity as between Danny Bates and the Commissioner-in-Possession concerning the insolvency of Sentinel Trust Company, as is set forth in the factual findings of In re: Sentinel Trust:

On June 17, 2004, the Commissioner and Department personnel met with Mr. Bates and his new attorney, Carrol Kilgore, to give them an opportunity to respond to the findings reflected in the Department's report of Sentinel's financial status or, in the alternative, to submit a written response prior to the Commissioner taking any action with respect to the report. Neither Mr. Bates nor Mr. Kilgore made any substantive changes to the report, and despite having indicated they would submit a written response by the next day, they declined to do so. Consequently, based on the determination that Sentinel was insolvent in an amount of at least \$6,225,000, that Sentinel did not have sufficient liquid assets to pay off its bondholders and creditors, that Sentinel did not have a viable plan for the infusion of sufficient capital to eliminate the \$7.6 to \$8.4 million cash deficiency in the pooled fiduciary account, and from the record as a whole, the Commissioner determined that liquidation of Sentinel pursuant to T.C.A. §§45-2-1502(c)(2) and 1504 was necessary and appropriate [footnotes omitted]. Accordingly, on June 18, 2004, the Commissioner issued a Notice of Liquidation of Sentinel Trust Company.

...

[On June 28, 2004], the Appellants⁸ filed a petition in Davidson County Chancery Court for a writ of supersedes and common law writ of certiorari, seeking judicial review

⁸ The "appellants" in the In re: Sentinel Trust case included Danny Bates, Clifton Todd Bates and Gary L. O'Brien.

of the Commissioner's decisions to take possession of, and to liquidate, Sentinel. The Appellants argued that the Commissioner had no authority to exercise his bank regulatory powers against Sentinel because the governing statutes allowing the Commissioner the power to take possession and liquidate applied solely to banks, not to trust companies. The writ of certiorari was issued on July 1, 2004.

On July 16, 2004, Appellants filed a motion requesting an expedited hearing only on the petition for writ of supersedeas. On July 16, 2004, the Commissioner filed a response to Appellants' motion stating that he had no objection to an expedited hearing on the writ of supersedeas and requested that the court also expedite a hearing on the writ of certiorari.

206 S.W.2d at 513-515 (emphasis added to demonstrate proximity of activity to the July 9, 2004 quitclaiming of property from Danny Bates to his wife and son) (brackets and footnotes added or omitted as shown).

28. Sentinel Services Corporation is and has been an inactive corporation, wholly owned and controlled by Defendant Danny Bates which never realized income or paid taxes and which was utilized to hold property otherwise belonging to Danny Bates, in "corporate" name. Danny Bates admits that there is not any difference between himself and Sentinel Services Corporation other than one is a "natural person" and the other is "an artificial creature of the State." **Exhibit 24** -- Bates' Deposition as Trustee of the Bates Family Trust (taken August 17, 2005) at pp. 27-30 and 53-54.

29. On October 12, 2004, Danny Bates, acting through Sentinel Services Corporation, quitclaimed, for the recital sum of \$10.00, all interest he held in a 47.55 acre parcel of land in Lewis and Hickman Counties to himself as trustee of an entity he established called the Bates Family Trust. See Exhibit 25. On October 12, 2004, Danny Bates, acting through Sentinel Services Corporation, quitclaimed, for the recital sum of

\$10.00, all interest he held in a 127.99 acre parcel of land in Lewis County to himself as trustee of the Bates Family Trust. See Exhibit 26.

30. Danny Bates has stated under oath that Sentinel Services Corporation never actually owned these properties, rather he did and that it was he, not Sentinel Services Corporation, that gave (without any consideration) the properties to the Bates Family Trust. **Exhibit 24** at pp. 36-37.

31. The Bates Family Trust, as established and as described by Danny Bates, was, at the time of those October 2004 transfers, a revocable trust controlled by Danny Bates, who had the unfettered ability to move assets into and out of that “trust” and otherwise completely controlled the activities of the “trust.” **Exhibit 24** generally and at pp. 10, 18-20.

32. At the time of the October 12, 2004 transfers, Danny Bates knew that the fiduciary accounts at Sentinel Trust had a shortfall of \$7.25 million. In re: Sentinel Trust, 206 S.W.3d at 510-11.

33. Of course, as of October 12, 2004, the value of Danny Bates’ Sentinel Trust stock, if it had value at all, was well below the \$1.5 million he valued it at as of April 30, 2004 and, thus, Bates’ net worth was significantly less than the \$2.0 million noted in his April 30, 2004 Personal Financial Statement. **Exhibit 12.**

34. The October 12, 2004 transfers also occurred after a flurry of activity relating to the liquidation of Sentinel Trust and Danny Bates’ unsuccessful attempts to stop that liquidation. As stated in the In re: Sentinel Trust case:

On July 16, 2004, Appellants filed a motion requesting an expedited hearing only on the petition for writ of supersedeas.

...

At a hearing on August 5, 2004, the Davidson County Chancery Court offered to consolidate the hearing on the request for supersedeas with the writ of certiorari so that all issues before the court, could be timely resolved. The Appellants, however, were not willing to agree to a consolidated hearing and sought to proceed solely on the request for supersedeas (based only upon the legal argument that the Commissioner was acting without statutory authority).

...

On August 9, 2004, the court issued an order denying the petition for writ of supersedeas.

...

On August 13, 2004, . . . Appellants filed a motion with the Davison County Chancery Court requesting that the court: (1) vacate or revise its August 9 order, (2) enter final judgment for Appellants upon both the writs of certiorari and supersedeas on the basis of the pleadings, (3) reserve to the Appellants the right to an evidentiary hearing, and (4) grant an immediate interlocutory appeal. On August 24, 2004, the trial court issued an order denying the motion requesting the court to vacate or revise its August 9, 2004 order. However, the trial court did grant Appellants permission to seek an interlocutory appeal pursuant to rule 9 of the Tenn. R. App. P. On August 27, 2004, Appellants filed an application for permission to appeal, and on application for extraordinary appeal. On September 1, 2004, the Middle Section of the Tennessee Court of Appeals issued an order dismissing both appeals.

In re: Sentinel Trust, 206 S.W.3d 515-16 (emphasis added to highlight proximity of dates to the October 12, 2004 quitclaim transfers).

35. Moreover, during the August-October 2004 timeframe, the Sentinel Trust Receivership was moving forward in discussions with various successor fiduciaries to

assume the fiduciary positions then currently held by Sentinel Trust.⁹ **Exhibit 27** – Affidavit of Jeanne B. Bryant at ¶3. Additionally, during this August-October 2004 timeframe, the Commissioner-in-Possession and Receiver had been successful in moving for and obtaining approval of Sentinel Trust Receivership fees and expenses. **Exhibit 27** at ¶4.

36. Prior to the May 18, 2004 takeover of Sentinel Trust, Danny Bates was in control of and dominated the operations of Sentinel Trust Company as evidenced by the following testimony given, under oath, at his criminal trial:

Q Now, going through the nineties, when you ran Sentinel Trust, do you recall the testimony during one of your things you characterized yourself basically as the dictator there. Is that not correct?

A Yes, I just said, because I was the sole director, the president and CEO, that I was the dictator.

Q In fact, during this period of time you were the one who had control of the bank accounts and bank statements, is that not correct?

A That's correct, and at one time I was the only employee. I did one hundred percent of everything.

Q But even into the nineties, you were the one that had control of the bank accounts, right?

A That's exactly right, because it was my liability, my responsibility, and I didn't want to get a situation where I lost control and was exposed to risk.

Q And in fact, by the time of the examination that was still the situation, right? That Mrs. Lamb noted?

A I only released areas from my control after I was satisfied that I had the sort of operational systems and controls in place to prevent any unpleasant surprises.

⁹ The Commissioner-in-Possession and Receiver's Motion Seeking Approval of Transfer of Fiduciary Positions was filed on November 4, 2004 in the In re: Sentinel Trust Receivership action (#4781).

Q And even when Mr. Williams came in you maintained control of the bank accounts, right?

A Yes.

Exhibit 28 -- Criminal Trial Transcript Excerpts pp. 908-99. See also Exhibit 19 at p. 2 (Danny Bates identifying himself as “Controlling Stockholder, President and Chairman of the Board” of Sentinel Trust Company); Complaint (filed May 18, 2005) at ¶4 and Danny Bates Answer (filed July 19, 2005) at ¶4.

37. Clifton Todd Bates and Gary O’Brien were directors of Sentinel Trust from December 30, 1999 until the May 18, 2004 institution of the Sentinel Trust Receivership. Answer of Clifton T. Bates (filed July 22, 2005) at p. 1; Answer of Gary L. O’Brien (filed July 20, 2005) at p. 1.

38. As members/former members of the Sentinel Trust Company Board of Directors, Danny Bates, Clifton Todd Bates and Gary O’Brien instituted, as plaintiffs, a lawsuit filed in Chancery Court of Davidson County (04-1934-I) which challenged the Commissioner-in-Possession’s authority to takeover Sentinel Trust Company and thus, in turn, were “appellants” in the In re: Sentinel Trust decision reported at 205 S.W.3d 501. See 205 S.W.3d at 505 for listing of “Appellants.”

39. As part of its factual findings, the Court in the In re: Sentinel Trust case found:

Specifically, the record reflects that Sentinel used pooled fiduciary funds to provide operating capital for non-related, defaulted bond issues, thereby creating a fiduciary cash shortfall that greatly exceeded Sentinel’s current operating capital. Even Sentinel’s own counsel conceded that Sentinel’s practice of funding defaulted bond expenses with funds from other non-related bond issues was “inappropriate.” On April 30, 2004, **Mr. [Danny] Bates**, by his own admissions, stated that his calculations showed that Sentinel had a deficit fiduciary cash position of

approximately \$7.25 million. The record reflects that, as early as the Department's report for Sentinel's year ending December 31, 1999, the trust company had failed to reconcile fiduciary cash and corporate accounts in an accurate fashion and to keep accurate books and records in accordance with industry standards and Department regulations. Additionally, Sentinel had failed to submit a capital plan outlining the company's plans to replenish the fiduciary pooled account, and had failed to make an initial infusion of \$2 million in capital by the May 17 deadline, as required by the Emergency Cease and Desist Order filed on May 3, 2004.

In their arguments, **[Danny Bates, Clifton Todd Bates and Gary O'Brien]** never deny that the above conditions existed at the time the Commissioner took possession of Sentinel. Rather, **[Danny Bates, Clifton Todd Bates and Gary O'Brien]** admit that Sentinel's practice of borrowing monies on deposit in the pooled fiduciary account from non-related bond issues to fund the expenses of defaulted bond issues resulted in a significant deficiency in cash in the pooled fiduciary account. Moreover, **Mr. [Danny] Bates** specifically admitted that he used the total cash held by the trust department (i.e., monies deposited in trust to be used for the purposes specified in the indenture) in a manner that was contrary to the indentures that governed Sentinel's actions as trustee. By their own admissions, prior to the Commissioner's taking possession of Sentinel, **[Danny Bates, Clifton Todd Bates and Gary O'Brien]** were engaging in practices that not only violated the Tennessee Banking Act, but also violated the FDIC's Statement of Principles of Trust Department Management, which Sentinel adopted as part of its corporate policies. Furthermore, these practices violated the indentures and contractual agreements between the bond issuers and Sentinel as fiduciary.

206 S.W.3d 524-25 (bold lettering and brackets added for clarity to substitute Danny Bates, Clifton Todd Bates and Gary O'Brien for "Appellants" and to insert "Danny Bates" when he is the "Mr. Bates" referenced).

40. Danny Bates never made any bond issuer or borrower aware of the use of Sentinel Trust's trust funds to pay default expenses for unrelated bond issues. **Exhibit 29**

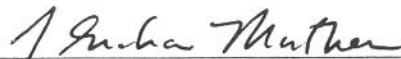
-- Transcript Excerpt of April 1, 2005 Davidson County Chancery Court Proceedings;
Exhibit 7 -- Responses to Interrogatories ##18 and 19 at pp. 16-17.

41. Had bond issuers or borrowers been aware that funds they were depositing with Sentinel Trust, for use regarding those particular bond issues, were instead being used to pay default expenses of unrelated bond issues, Sentinel Trust would have been removed as trustee from many bond issues. **Exhibit 30** -- March 22, 2005 letter from Chancellor Health Partners, which was admitted without objection as Exhibit 32 to April 1, 2005 Davidson County Chancery Court Proceedings.

42. At present, if all funds available to the Sentinel Trust Receivership Estate were used to pay the existing deficiency in the fiduciary accounts, there would still be a \$4.395 million shortfall in fiduciary funds. That is the amount that claimants of Sentinel Trust, who based their claims on funds that should have been held by Sentinel Trust, will not be paid. The \$4.395 million amount has been calculated based on numbers, procedures and methodologies presented to the Sentinel Trust Receivership Court and upon which final orders of that Court have been based and/or have been entered. **Exhibit 27** -- Affidavit of Jeanne B. Bryant at ¶¶5-11.

43. Because Sentinel Trust Company was a “grandfathered” trust company regarding its being regulated by the Tennessee Department of Financial Institution, it had until July 1, 2002 within which to comply with any directions or instructions of that Department. **Exhibit 31** -- July 28, 2000 letter from then Commissioner Houston to Sentinel Trust Board of Directors (which is Exhibit 35 to Bates Criminal Trial).

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon the following, via U.S. Mail and by Federal Express as noted, on this the 23rd day of December, 2009.

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